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# In the Supreme Court of the United States

October Term, 1979

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TREPEL PETROLEUM CORPORATION,
*Petitioner,*
v.
CLEVEROCK ENERGY CORPORATION,
*Respondent.*

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## OPPOSITION BRIEF TO PETITION FOR WRIT OF CERTIORARI

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COGSWELL & WEHRLE
Phillip C. Gans
1910 Lincoln Center
1660 Lincoln Street
Denver, Colorado 80264

*Attorneys for Respondent*

TABLE OF CONTENTS


I. OPINIONS BELOW ..... 2

II. JURISDICTION ..... 2

III. QUESTION PRESENTED ..... 2

IV. STATUTE INVOLVED ..... 3

V. STATEMENT OF THE CASE ..... 4

VI. REASONS FOR DENYING THE WRIT ..... 7

A. This Case Is Consistent with This Court's Decisions on Due Process Limits of Long-Arm Jurisdiction ..... 7

B. This Case Does Not Raise Any Important Questions Concerning Due Process Limits of Personal Jurisdiction ..... 8

C. There Is No Clear Statement of Facts Found by the District Court Because Petitioner Did Not Pursue the Jurisdiction Issue at Trial ..... 9

VII. CONCLUSION ..... 10

TABLE OF CITATIONS

CASES

*Rush v. Savchuk*, 48 U.S.L.W. 4088 (U.S. Jan. 21, 1980)(No. 78-952) ..... 8

*World-Wide Volkswagen Corp. v. Woodson*, 48 U.S.L.W. 4079 (U.S. Jan. 21, 1980) (No. 78-1078) ..... 8

STATUTES

28 U.S.C. § 1254 (1) ..... 2

28 U.S.C. § 1332 ..... 5

C.R.S. 1973 § 13-1-124 ..... 3, 5



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TREPEL PETROLEUM CORPORATION,
*Petitioner,*
v.
CLEVEROCK ENERGY CORPORATION,
*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Respondent respectfully prays that a Writ of Certiorari not issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit in *CleveRock Energy Corporation v. Martin Trepel and Trepel Petroleum Corporation*, Nos. 78-1054 and 78-1055.

## I. OPINIONS BELOW

The opinions of the United States District Court for the District of Colorado have not been reported and are appended to the Petition as Appendix A and Appendix B. The opinion of the United States Court of Appeals for the Tenth Circuit has been reported at 609 F.2d 1358 and is appended to the Petition as Exhibit C.

## II. JURISDICTION

The judgment and opinion of the Court of Appeals were entered November 20, 1979. This Court has jurisdiction to review the judgment of the Court of Appeals by writ of certiorari under 28 U.S.C. § 1254(1).

## III. QUESTION PRESENTED

There are two questions presented:

(1) Whether it is consistent with due process for a Colorado federal court to assert personal, "long-arm" jurisdiction over the defendant Michigan corporation, Trepel Petroleum Corporation, in an action for breach of a contract where such jurisdiction is based upon, among other events, the following contacts: (a) personal visits by the principal of the corporation and his agent to Colorado; (b) numerous telephone contacts to the state of Colorado; (c) negotiations in the state of Colorado; (d) contract preparation in Colorado and formation in Colorado; (e) performance called for in Colorado, including payment of $177,750, assignment of a lease, activities as an operator of an oil and gas field, preparation of a development plan in Colorado, preparation of other formal agreements in Colorado, maintenance of books and records and payment of invoices in Colorado.



(2) Whether Trepel Petroleum Corporation abandoned and waived its right to assert lack of personal jurisdiction by failure to pursue it on a motion to dismiss, by unconditionally filing and pursuing counterclaims, and by failing to raise the issue at trial.

## IV. STATUTE INVOLVED

Colorado Revised Statutes of 1973, Title 13, Article 1, Section 124 (C.R.S. 1973, § 13-1-124) provides:

> **Jurisdiction of Courts.** (1) Engaging in any act enumerated in this section by any person, whether or not a resident of the state of Colorado, either in person or by an agent, submits such person, and, if a natural person his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising from:
>
> (a) The transaction of any business within this state;
>
> (b) The commission of a tortious act within this state;
>
> (c) The ownership, use, or possession of any real property situated in this state; or
>
> (d) Contracting to insure any person, property, or risk residing or located within this state at the time of contracting.

## V. STATEMENT OF THE CASE

This is an action for breach of contract involving CleveRock Energy Corporation ("Respondent") and defendant Martin Trepel ("Trepel") and defendant-petitioner Trepel Petroleum Corporation ("Petitioner"). Respondent is an Indiana corporation and had its principal place of business in Colorado. Trepel is a Michigan resident and president of the Petitioner. Petitioner is a Michigan corporation with its principal place of business in Michigan.

In the case, tried in the United States District Court, there were two contracts in question. The first contract was between Trepel and the Respondent. It related to a project located in the state of Colorado. Judgment was entered on the contract in favor of CleveRock Energy Corporation against Martin Trepel. Judgment in that case was affirmed by the Court of Appeals and was not the subject of the petition.

The other contract in question was between Respondent CleveRock Energy Corporation and either Trepel, individually, or Trepel's company, Trepel Petroleum Corporation, Petitioner. That contract was initially negotiated by Trepel and his agent in the state of Colorado in November 1974. The terms of that agreement were later modified after numerous telephone conversations between Trepel and Dan Cleveland, Respondent's president, many of which were made and initiated by Trepel to the state of Colorado.

A written agreement was ultimately prepared by Respondent's attorneys in Denver, Colorado, and sent, unexecuted, to the attorneys for Petitioner. It was then forwarded by Petitioner's attorneys to Petitioner, who executed it and



returned it to Respondent. Respondent executed it, and a contract was then created in Colorado.

The contract itself called for performance of all its major activities in the state of Colorado, other than the actual development on the waterflood project itself, which included the following:

(1) Payment of $177,750;

(2) Assignment of the interest to be conveyed to Petitioner;

(3) Respondent's activities as operator of the Scott Field;

(4) Preparation of a development plan by Respondent;

(5) Preparation of other formal agreements;

(6) Maintenance of books and records;

(7) Payment of invoices.

The contract called for payment by Petitioner in April 1975. Payment was not made, and the Respondent advised Petitioner that it would look elsewhere for placement of the project.

Respondent initiated this action in United States District Court in the summer of 1975 pursuant to 28 U.S.C. 1332, seeking to recover damages from Trepel and Petitioner. Jurisdiction was predicated on the Colorado "long-arm" statute, C.R.S. 1973, § 13-1-124, *supra.;* and service on the defendants was made ouside Colorado. Trepel

and Petitioner filed a Motion to Dismiss the Complaint for Lack of Jurisdiction, which was denied for their failure to submit supporting briefs and affidavits. Petitioner filed a counterclaim on the Scott Field agreement. Petitioner then raised, again, the issue of jurisdiction in a Motion for Summary Judgment, which was also denied. Petitioner pursued its counterclaims on the Scott Field agreement at trial and did not raise the issue of jurisdiction at trial.

After the trial in the United States District Court in the summer of 1977, a Memorandum Opinion and Order was entered on November 17, 1977. Trepel was found not personally liable on the Scott Field agreement, and the Petitioner was found to have reached the agreement; however, no damages were assessed against Petitioner. In addition, Petitioner's counterclaim against Respondent for a breach of the Scott Field agreement was dismissed by the Court.

On appeal, the Court of Appeals for the Tenth Circuit affirmed the judgment of the district court on all points, including on the issue of personal jurisdiction over the Petitioner on the Scott Field claim. The court found, among other things, that the "facts of this case cumulatively satisfy this test of due process." (Petitioner's Appendix C at Page 36a). Among other things, the Court of Appeals pointed out that "Trepel, president of TPC, came to Colorado and, in the course of various business negotiations, orally agreed to the terms of the Scott Field contract." (Petitioner's Appendix C at Page 36a). The United States Court of Appeals also noted that the contract was to be performed in Colorado and that payments were to be made to Colorado; that the development plan was to be made in Colorado; and that the invoices were to be paid in Colorado. The Court of Appeals also pointed out that "[T]here may be additional bases for a finding of jurisdiction in this case." (Petitioner's Appendix C at Page 37a, footnote 9).



## VI. REASONS FOR DENYING THE WRIT

The decision of the United States Court of Appeals is correct and consistent with pronouncements of the United States Supreme Court. This is not a case which even tests the limits of *in personam* jurisdiction.

### A. *This Case Is Consistent with This Court's Decisions on Due Process Limits of Long-Arm Jurisdiction.*

There are at least the following contacts with Colorado to justify *in personam* jurisdiction:

(a) personal visits by the principal of the corporation and his agent to Colorado;

(b) telephone contacts to the state of Colorado;

(c) negotiations in the state of Colorado;

(d) contract preparation in Colorado and formation in Colorado;

(e) performance in Colorado, including payment of $177,750, assignment of a lease, activities as an operator of an oil and gas field, preparation of a development plan in Colorado, preparation of other formal agreements in Colorado, maintenance of books and records and payment of invoices in Colorado.

Despite Petitioner's suggestion to the contrary, there was a finding that the Scott Field agreement *was* made in

Colorado, in November 1974. (Petitioner's Appendix C at Page 36a). This alone, without any of the other numerous contacts, would support a jurisdictional basis.

To compare what was referred to as the "fortuitous circumstance that a single automobile" would pass through Oklahoma to the purposeful acts of Respondent in negotiation in Colorado is to miss the import of *World-Wide Volkswagen Corp. v. Woodson,* 48 U.S.L.W. 4079 (U.S. Jan. 21, 1980) (No. 78-1078). In *World-Wide,* this Court made clear the distinction between an isolated dealer selling a car that might end up in Oklahoma and a course of action or conduct where there would be a reasonable "expectation" that the goods would reach another state (by a person such as a manufacturer). In this case, the facts show that Trepel had an expectation of affecting events in Colorado.

The quotation from *World-Wide* cited by Petitioner is inappropriate to the fact circumstances of this case. Here, Petitioner did carry on activity in Colorado; closed a contract in Colorado; and availed himself of the privileges and benefits of Colorado law.

In *Rush v. Savchuk,* 48 U.S.L.W. 4088 (U.S. Jan. 21, 1980) (No. 78-952), the Court pointed out that "[I]t cannot be said that the defendant engaged in any purposeful activity related to the forum." Here, it is clear that the petitioner engaged in purposeful activities related to the forum; in this case, there were such purposeful activities.

B. *This Case Does Not Raise Any Important Questions Concerning Due Process Limits of Personal Jurisdiction.*



The facts in this case do not suggest any important or recurring questions concerning due process limits of personal jurisdiction. The cases cited in Petitioner's brief are not conflicting to this case.

C. *There Is No Clear Statement of Facts Found by the District Court Because Petitioner Did Not Pursue the Jurisdiction Issue at Trial.*

As mentioned above, Petitioner did not raise at trial the issue of jurisdiction and merely proceeded on the merits. The United States District Court made no specific findings on the issue of jurisdiction and merely assumed that jurisdiction was admitted. Many of the facts establishing jurisdiction were not raised or specifically found by the United States District Court. The Court of Appeals even stated in its ninth footnote that "there may be additional bases for finding of jurisdiction in this case. [T]he judge below made no specific findings upon which we can rely." (Petitioner's Appendix C at Page 37a, footnote 9).

## VII. CONCLUSION

For the reasons stated herein, Respondent respectfully prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

COGSWELL and WEHRLE
Phillip C. Gans
1910 Lincoln Center
1660 Lincoln Street
Denver, CO 80264
Telephone: 303-861-2150

*Attorneys for Respondent*